

(b) Incumbent grantees will not have an opportunity to cure in an open competition because that will create an inequity in favor of incumbents which already have opportunities to correct deficiencies through technical assistance, provided by the Department, under OAA sec. 514(e)(2)(A).

(c) If the Administrative Law Judge (ALJ) rules that the organization should have been selected, in whole or in part, and the organization continues to meet the requirements of this part, the matter must be remanded to the Grant Officer. The Grant Officer must, within 10 working days, determine whether the slots which are the subject of the ALJ's decision will be awarded, in whole or in part, to the organization and the timing of the award. In making this determination, the Grant Officer must take into account disruption to participants, disruption to grantees and the operational needs of the SCSEP. The Grant Officer must return the decision to the ALJ for review. In the event that the Grant Officer determines that it is not feasible, the successful appellant will be awarded its bid preparation costs or a pro rata share of those costs if Grant Officer's finding applies to only a portion of the funds that would be awarded to the successful appellant. An applicant so selected is not entitled to the full grant amount but will only receive the funds remaining in the grant that have not been expended by the current grantee through its operation of the grant and its subsequent closeout. The available remedy in an SCSEP non-selection appeal is the right to be selected in the future as an SCSEP grantee for the remainder of the current grant cycle. Neither retroactive nor immediately effective selection status may be awarded as relief in a non-selection appeal under this section and § 641.900.

Any organization selected and/or funded as an SCSEP grantee is subject to having its slots reduced or to being removed as an SCSEP grantee of an ALJ decision so orders. The Grant Officer provides instructions on transition and closeout to both the newly designated grantee and to the grantee whose slots are affected or which is being removed. All parties must agree to the provi-

sions of this paragraph as a condition of being an SCSEP grantee.

**§ 641.480 May the Governor make recommendations to the Department on grant applications?**

(a) Yes, each Governor will have a reasonable opportunity to make comments on any application to operate a SCSEP project located in the Governor's State before the Department makes a final decision on a grant award. The Governor's comments should be directed to the Department and may include the anticipated effect of the proposal on the overall distribution of program positions within the State; recommendations for redistribution of positions to underserved areas as vacancies occur in previously encumbered positions in other areas; and recommendations for distributing any new positions that may become available as a result of an increase in funding for the State. The Governor's recommendations should be consistent with the State Plan.

(b) Under noncompetitive conditions, the Governor may make the authorized recommendations on all applications. However, under competitive conditions, the Governor has the option of making the authorized recommendations on all applications or only on those applications proposed for award following the rating process. It is incumbent on each Governor to inform the Department of his or her intent to review the applications before or after the rating process.

**§ 641.490 When may SCSEP grants be awarded competitively?**

(a) The Department must hold a competition for SCSEP funds when a grantee (national grantee, national grantee in a State, or State grantee) fails to meet its performance measures; the eligibility requirements; or the responsibility tests established by section 514 of the OAA.

(b) The Department may hold a full and open competition before the beginning of a new grant period, or if additional grantees are funded. The details of the competition will be provided in a Solicitation for Grant Applications published in the FEDERAL REGISTER or in another medium. The Department